

## Department of State

## § 16.1

### § 16.1 Definitions.

(a) *Act* means the Foreign Service Act of 1946, as amended.

(b) *Grievant* means any officer or employee of the Service who is a citizen of the United States; or for purposes of paragraphs (c) (7) and (8) of this section, a former officer or employee of the Service; or in the case of death of the officer or employee, a surviving spouse or dependent family member of the officer or employee.

(c) *Grievance* means any act or condition subject to the control of the Foreign Affairs agencies (the Department of State, the Agency for International Development, or the U.S. Information Agency) which is alleged to deprive the grievant of a right or benefit authorized by law or regulation or is otherwise a source of concern or dissatisfaction to the grievant, including, but not limited to the following:

(1) Complaints against separation of an officer or employee allegedly contrary to law or regulation or predicated upon alleged inaccuracy (including inaccuracy resulting from omission or any relevant and material document), error, or falsely prejudicial character of any part of the grievant's official personnel record;

(2) Other alleged violation, misinterpretation, or misapplication of applicable law, regulation, or published policy affecting the terms and conditions of the grievant's employment or career status;

(3) Allegedly wrongful disciplinary action against an employee constituting a reprimand or suspension from official duties;

(4) Dissatisfaction with any matter subject to the control of the agency with respect to the grievant's physical working environment;

(5) Alleged inaccuracy, error, or falsely prejudicial material in the grievant's official personnel file;

(6) Action alleged to be in the nature of reprisal or other interference with freedom of action in connection with an employee's participation under these grievance procedures;

(7) When the grievant is a former officer who was involuntarily retired pursuant to sections 633 and 634 of the Act within 6 years prior to December 1, 1975, "grievance" shall mean a com-

plaint that such involuntary retirement violated applicable law or regulation effective at the time of the retirement or that the involuntary retirement was predicated directly upon material contained in the grievant's official personnel file alleged to be erroneous or falsely prejudicial in character; and

(8) When the grievant is a former officer or employee or a surviving spouse or dependent family member of a former officer or employee, "grievance" shall mean a complaint that an allowance or other financial benefit has been denied arbitrarily, capriciously or contrary to applicable law or regulation.

(d) Grievance does not include the following:

(1) Complaints against individual assignment or transfers of Foreign Service officers or employees, which are ordered in accordance with law and regulation (see also paragraph (c)(2) of this section);

(2) Judgments of Selection Boards rendered pursuant to section 623 of the Act, or of equivalent bodies, in ranking Foreign Service officers and employees for promotion on the basis of merit, or judgments in examinations prescribed by the Board of Examiners pursuant to section 516 or 517 of the Act (see also paragraph (c)(2) of this section);

(3) Termination of time-limited appointments pursuant to 22 U.S.C. 929 and 1008, and the pertinent regulations prescribed by the employing agency (see also paragraph (c)(2) of this section);

(4) Any complaints or appeals for which a specific statutory appeals procedure exists (see appendix A for examples).

A grievance filed under these procedures may be based on matters for which there is a specific statutory appeals procedure which is applicable to the Foreign Service grievant. Should the jurisdiction of the Grievance Board over a specific grievance be placed into question on grounds that the basis of the grievance is not encompassed within the Board's authority (§16.1(d)(4) and Appendix A), the Board shall consult with the other statutory body concerned, transmitting the views of the

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parties concerned before determining whether it has jurisdiction.

(e) *Employee organization* means any employee organization accorded recognition as the exclusive employee representative pursuant to Executive Order 11636 dated December 17, 1971.

(f) *Grievance Board* or *Board* means the full Foreign Service Grievance Board, or a Panel or member thereof, as appropriate.

(g) *Party* means the grievant or the Foreign Affairs agency having control over the act or condition forming the subject matter of the grievance.

(h) *Bureau* means equivalent organizational elements in State and USIA, and includes offices in AID.

(i) *Days* means calendar days.

### § 16.2 General provisions.

(a) *Statement of purpose.* These regulations establish procedures as required by law to provide Foreign Service officers and employees (and their survivors) of the Foreign Affairs agencies, a grievance procedure to insure a full measure of due process, and to provide for the just consideration and resolution of grievances of such officers, employees, and survivors. No regulation promulgated in this part shall be interpreted or applied in any manner which would alter or abridge the provisions of the due process established by the Congress in Pub. L. 94–141, 22 U.S.C. 1037, section 691.

(b) *Discussion of complaints.* (1) Every effort should be made to settle any employee complaint informally, promptly, and satisfactorily.

(2) Supervisors and other responsible officers should encourage employees to discuss complaints with them and should respond in a timely manner to resolve the complaints.

(3) An employee initially should discuss a complaint with the employee's current supervisor or with the responsible officer who has immediate jurisdiction over the complaint to give that person an opportunity to resolve the matter, before further steps are taken under these procedures.

(c) *Guidance.* Nothing in these procedures prevents a grievant from seeking guidance from any official who might be helpful respecting the submission of a grievance or its resolution.

(d) *Freedom of action.* (1) Any grievant, witness, representative or other person involved in a proceeding hereunder shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them. The Foreign Affairs agencies recognize their obligation to insure compliance with this section. Any person involved or having immediate knowledge of any alleged breach of this section should call it to the attention of the pertinent foreign affairs agency through appropriate channels for corrective action as necessary. Normally such allegations should be brought to the attention of the senior agency official at the post; and at Washington, DC, to the Director, Grievance Staff for State; Chief, Employee Relations Branch for AID and Chief, Employee-Management Relations Division for USIA.

(2) The grievant has the right to a representative of the grievant's own choosing at every stage of the proceedings. The grievant and representative(s) who are under the control, supervision, or responsibility of the Foreign Affairs agencies shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the grievance.

(3) Any witness under the control, supervision, or responsibility of a Foreign Affairs agency shall be granted reasonable periods of administrative leave to appear and testify at any such proceeding.

(4) The Foreign Service Grievance Board established hereunder shall have authority to ensure that no copy of the determination of the agency head or designee to reject a Grievance Board recommendation, no notation of the failure of the Grievance Board to find for the grievant, and no notation that a proceeding is pending or has been held, shall be entered in the personnel records of the grievant (unless by order of the Grievance Board as a remedy for the grievance) or those of any other officer or employee connected to the grievance. The Foreign Affairs agencies shall maintain grievance records under appropriate safeguards to preserve confidentiality (§16.9).